

December 6, 2004 Workshop

Optimizing Brownfields Cleanups in California

An Open Exchange of Information and Ideas

Summary of Comments Received

The following chart contains a summary of public comments received at the December 6 2004, Cal/EPA, Department of Toxic Substances Control (DTSC) and Water Board workshop where input was solicited regarding optimizing brownfields cleanups in California. Comments are grouped under the following major headings: DTSC's Voluntary Cleanup Program, Memorandum of Agreement between Cal/EPA, DTSC and the Water Boards, AB 389, Redevelopment, Comments on Existing Tools/Programs, Alternative Cleanup programs, Miscellaneous, and suggestions for follow-up. Comments are consolidated and summarized, and, for some comments a brief response is included.

DTSC's Voluntary Cleanup Program:			
1	Eligibility	Non-RPs should be allowed to participate in the VCP, including prospective purchasers. DTSC has inherent settlement authority in Chapter 6.8 that would allow it to work with non-RPs under the VCP.	DTSC is exploring these authority issues.
2	Streamlining	<p>There is a place for Chapter 6.8 cleanups. However, DTSC's cleanup process is too long and expensive for many Brownfields sites. Suggestions for addressing this included:</p> <ul style="list-style-type: none"> Re-evaluating strict adherence to the federal NCP cleanup process to find flexibility to tailor the cleanup process to site conditions; Using screening levels instead of a risk assessment; Collapsing all the contemplated documents into one or two; Using presumptive remedies; Tailoring public participation to the site; Publishing cost guidelines like the Water Board's UST guidelines; Setting and meeting review schedules for documents; and Integrating support staff (toxicologists, public participation specialists, geologists) with cleanup program staff, to improve the ability to meet schedules and control costs (i.e., toxicologists should not review site characterization workplans which results in delays and increases costs). 	DTSC is actively considering ways to streamline the 6.8 cleanup process. We have received a number of good suggestions. Some of the comments reflect tasks already in development (e.g., screening levels).

#	Category	Comment	Response
3	Risk Assessment	Please clarify whether DTSC and the Water Boards apply the same risk assessment approach and acceptable risk levels. If they do not, what actions are or will be take to achieve consistent application?	As discussed during the workshop, DTSC and the Water Boards have different missions and operate under different statutory authorities. The agencies will continue to collaborate with the goal of improving consistency between the various programs. Use of the Cal/EPA screening numbers and the development of uniform site assessment guidelines and cleanup requirements (for implementation of both the MOA and AB 389) are specific planned 2005 activities.
4	Public Participation	<p>DTSC has a one-size-fits-all public participation process. It is important that an effective program exists to provide confidence that sites are being characterized and addressed correctly and safely and that the public has the opportunity to participate meaningfully in the process. Public participation should be tailored in consideration of the potential risks posed by the site and the needs of the community.</p> <p>Another suggestion was to redefine the term 'brownfield' more narrowly to limit the sites it applies to, and to then develop specific public participation requirements tailored to these brownfields sites.</p>	<p>Public participation activities should be tailored to the level of community interest. The goal of public participation activities is to ensure that the community is informed and has an opportunity to participate in the decision-making process.</p> <p>DTSC will revisit its public participation guidance manual to ensure that this is clear. As part of this process, DTSC will seek further stakeholder input.</p>
5	Public participation	DTSC should prepare guidance, on CD, explaining its public participation process to assist communities in coming up to speed quickly.	DTSC will explore how to best accomplish this.
6	CEQA	Commenters expressed that DTSC should seek CEQA equivalency for its cleanup work.	
7	CEQA	CEQA compliance could be streamlined if specific levels of significance were defined through guidance developed specific to site cleanup program needs.	

7	Category	Comments	Response
8	Additional Guidance	<p>Commenters suggested the need for additional guidance, including:</p> <ul style="list-style-type: none"> – Guidance for site characterization; – A “contained in” policy for soil; – An area of contamination policy for soil; – Guidance to explain what a risk assessment is and what it is not. <p>Clarification was requested regarding whether DTSC’s ‘sensitive uses’ memo creates a presumption against the use of restricted sites for residential or other sensitive uses, especially for properties overlying contaminated groundwater.</p>	<p>Providing clear guidance is very important. DTSC plans to assess its current guidance documents to determine where gaps exist or where guidance is out-of-date. Once this is done, DTSC can better prioritize additional topics requiring the development of guidance documents.</p> <p>DTSC is also planning to revisit its sensitive uses memorandum to clarify that it <u>does not</u> impose a prohibition against sensitive uses (such as residential) over contaminated groundwater.</p> <p>DTSC is also evaluating ways to make its existing guidance more visible and accessible via the DTSC website.</p> <p>DTSC generally follows EPA's contained-in, area of contamination (AOC), and CAMU policies, and makes decisions based upon waste specific risk determinations. A summary of EPA's policies can be found at: http://www.epa.gov/correctiveaction/workshop/remwaste/mgt.pdf</p>

Memorandum of Agreement (MOA) between Cal/EPA, DTSC and the Water Boards

9	MOA	The Water Board should be able to serve as lead oversight agency for all types of sites, including those proposed for residential development.	Comments regarding the content of the MOA have been forwarded to Cal/EPA.
10	MOA	The MOA process should be opened up to local agencies.	Comments regarding the content of the MOA have been forwarded to Cal/EPA.
11	MOA	Properties developed for residential or mixed use deserve the agencies utmost attention and should follow the Chapter 6.8 cleanup process.	Comments regarding the content of the MOA have been forwarded to Cal/EPA.

AB 389

12	AB 389	Guidance should be provided for obtaining liability relief under AB 389. Definitions and eligibility requirements for prospective purchasers and innocent property owners and the implementation process should be clarified.	<p>AB 389 is new and complex legislation. The agencies are developing forms and guidance for implementing this statute. The agencies are also developing responses to 'frequently asked questions' to be posted on the agencies' web sites.</p> <p>The agencies have scheduled 3 workshops in April to provide further information about AB 389 implementation (See the Cal/EPA, DTSC and Water Board web sites for information on these workshops).</p>
13	AB 389	Clarify differences in site cleanup activities (remedial actions, not process) required in an AB 389 response plan for bona fide prospective purchasers, versus what Chapter 6.8 requires for such parties.	The cleanup goals are required to be consistent with Chapter 6.8 and Water Code cleanup requirements, so no difference is anticipated.
14	AB 389	Are the timelines achievable? Will this streamline the process?	
15	AB 389	What should people do between January 1, 2005 when the statute became effective and the date when the application form is published.	The law is in effect and the agencies will accept requests to use the legislation's provisions.
16	AB 389	Commenters wanted one set of screening values accepted by all agencies and standardized cleanup guidelines.	Cal/EPA will have one set of screening values. (Also, see response to comment #3.)

Redevelopment

17		Redevelopment project areas are blighted by definition. Markets aren't investing in these areas and businesses cannot bear the costs of cleanup. Incentives, such as liability relief, loans, and government assistance are needed.	Liability relief and other incentives play a role in addressing brownfields. The passage of AB 389 and the increased use of the Polanco Act by Redevelopment Agencies should address some of the liability issues. The agencies will continue to explore further incentives.
18		<p>There is a need to better coordinate the local redevelopment planning process with the cleanup process. Some suggestions for accomplishing this are: Gather all of the regulatory agencies (city, county, state) with potential jurisdiction over parts of the project together early to identify agency requirements; designate a de facto lead agency; and, coordinate amongst the various agencies with regulatory roles. This may need to be done prior to initiation of the CEQA process.</p> <p>Consolidate meetings required as part of various agencies' approval processes into one meeting.</p>	<p>Meetings early in the process improve coordination and better enable integration of regulatory requirements with the redevelopment process.</p> <p>AB 389 requires the oversight agency to coordinate with public participation activities undertaken by the host jurisdiction and other agencies associated with a development project. The Polanco Act provides for close coordination of cleanup and redevelopment planning processes. DTSC is working with redevelopment agencies to further maximize the potential integration of DTSC's requirements with the redevelopment process.</p>
19		Need to make land use covenants more visible to county planners.	<p>Land use restrictions placing limits or requirements on future use of a property are required where properties are not remediated to unrestricted use. The Agencies are required to maintain a list of all land use restrictions recorded as a condition of cleanup to protect the public from unsafe exposures to residual contamination that is left in place following site cleanup. The Deed Restricted Sites Lists is on Cal/EPA's web site; it provides public access to information on deed restrictions and affected sites.</p> <p>The Agencies are working on database enhancements to make institutional controls (IC) information more visible in a GIS format.</p> <p>The agencies have also been involved in discussions with federal, state, local and private stakeholders to identify key issues in the application, monitoring, and tracking of ICs at all levels of government.</p>
20		Revise tax structure to create a disincentive towards sprawl.	

Comments on Existing Tools/Programs

21	Site Designation	Anyone willing to do the cleanup should be able to apply through the Site Designation process for the designation of a lead agency for a property.	The Site Designation process does not require that a person have caused or contributed to, or otherwise be a responsible party under the traditional definition to apply for this program. "Responsible party" is defined in the Site Designation law (Section 25260(h), Health & Safety Code) as not only someone who is responsible in the traditional sense, but also as someone who agrees to do a cleanup where one is required. There are restrictions on the types of sites that may apply.
22	SB 32	Clarify why screening levels required in SB 32 were not published by the October 2004 deadline.	The screening levels were published in February 2005 and can be found on the Cal/EPA web site at: http://www.calepa.ca.gov/Brownfields/SB32.htm .
23	Prospective Purchaser Agreements (PPAs)	PPAs should cover both DTSC and the Water Boards, rather than a single agency.	It would be desirable to have one agreement cover both agencies; a process would be needed to ensure that each agency has the appropriate information and an adequate opportunity to review the site conditions the PPA is based upon to ensure that its requirements are being met. The agencies will look at this issue in implementing the MOA. Currently, entities entering into a PPA with one agency may apply to the other agency for a comfort letter. AB 389 may address some of the liability issues that previously required a PPA to resolve.
24	Private Site Manager	Eligibility requirements eliminate most sites from consideration and the cleanup process is onerous. DTSC should look at the Massachusetts program.	
25	ERAP	ERAP does not have a reputation of being successful. No more money exists for orphan shares.	The total number of sites eligible for the program has not been reached; this is one indicator that the program has not proven as useful as was intended. There are still opportunities for orphan share funding.
26	CLEAN	Comments varied about this loan program, ranging from discouraging DTSC from pursuing additional funding, to seeking full funding of the initial authorized \$85 million. One commenter noted that the eligibility criteria were very narrow when this legislation was first enacted.	Due to current budget constraints, DTSC will not be pursuing additional funding for the CLEAN loan program at this time.

Alternative Cleanup Programs

27		<p>There were a number of comments about creating an alternative cleanup process (alternative to Ch. 6.8):</p> <ul style="list-style-type: none"> Create a self-directed cleanup program; Create a cleanup program that specifies goals, not a process; Create a cleanup process that becomes additive if more contamination is found; and, don't assume a worst case scenario up-front. <p>(See attachment A for specific process suggestions from one commenter.)</p>	<p>DTSC is actively considering alternatives to the traditional Chapter 6.8 cleanup process. A number of very good suggestions were received and these will be considered further.</p> <p>Developing appropriate alternative cleanup programs/processes is a high priority.</p>
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Miscellaneous

28	Budget	Legislation is needed for DTSC and the Water Board to fund additional resources through a "pay-as-you-go" process. This would not impact the General Fund budget.	
29	Water Board	Need to see consistent policies and application of policies between Regional Water Boards.	The Water Boards are undertaking several efforts to address issues of consistency in their cleanup programs. These include: trainings on risk assessment and risk-based corrective action, broader use of screening levels to address human health aspects, expansion of statewide screening levels to address groundwater protection, and regular meetings of UST and SLIC program representatives from the various Water Boards to discuss common concerns (quarterly roundtables).
30	Water Board	Need to have one set of screening levels that all DTSC, Regional Board and local agencies use.	Cal/EPA screening levels were published in February 2005 and can be found on the Cal/EPA web site at: http://www.calepa.ca.gov/Brownfields/SB32.htm . These recently issued screening levels are the first step; the agencies will expand the screening levels to address more constituents and exposure pathways in the future.

31	DTSC and Water Board	Need to evaluate risks associated with implementation of the cleanup.	DTSC conducts a qualitative evaluation and includes steps to address this issue as part of its remedy selection document. Additionally, air monitoring action levels established for remedy implementation are based upon a quantitative assessment.
32	DTSC and Water Board	Need to clarify how migration of VOCs through soil-gas to indoor air has been addressed in previous projects and whether there is a need to reassess/address this media in previous projects.	The agencies have reevaluated this at past sites and do consider the indoor air pathway, when appropriate, at current sites. DTSC recently adopted a new interim final guidance on evaluation and mitigation of subsurface vapor intrusion to indoor air.

33	DTSC and Water Board	Need to clarify how environmental justice is addressed in the brownfields cleanup and redevelopment process. Does this push cleanup standards toward unrestricted/no risk final remedy?	The cleanup process and requirements are the same for all DTSC and Water Board cleanup sites regardless of where a site is located. DTSC addresses environmental justice issues through the public participation process. Knowledge of community needs and interests with respect to the cleanup project guides public participation activities; environmental justice issues are part of this community assessment.
34	DTSC and Water Board	Need to clarify how financial assurance is ensured for operation and maintenance.	Health & Safety Code Section 25355.2 requires financial assurance for operation and maintenance to be demonstrated and maintained through specific financial assurance mechanisms, at sites cleaned up under Chapter 6.8. State regulations (Section 67391.1, Title 22, Cal. Code of Regs.) also require payment of DTSC's costs for administration of land use controls at all DTSC cleanup sites.
Suggestions for Follow-up:			
35		Hold an affordable statewide brownfields conference.	The agencies are considering a variety of needs to communicate with and receive information from stakeholders, and will consider how conferences and other workshops and meetings will facilitate those goals.
36		<p>Hold additional trainings or workshops on the following topics:</p> <ul style="list-style-type: none"> – Same as this one in Los Angeles; – How to layer or combine federal, state and local tools; – DTSC's cleanup process, including steps that can be combined, the process for sites that only require a deed restriction, and how to identify and address appropriate public participation requirements. <p>Hold another workshop in a different format: Provide participants an opportunity to receive input from various state staff in the room to allow for more thorough and accurate dialog; use flipcharts or show comments so attendees can build on comments made earlier; allow attendees to help develop questions ahead of time.</p>	<p>The agencies will be exploring additional training and workshops on several topics, including the implementation of AB 389.</p> <p>A Brownfields Workshop with a more local focus, similar to the one held in Los Angeles in November, 2004, was recently held (February 23, 2005) in Sacramento.</p> <p>Comments regarding improvements to the way the December 6, 2004 workshop was conducted are well taken and will be considered when another workshop is scheduled.</p>

37		DTSC and the Water Boards should complete a survey of all sites that received a comfort letter, NFA, completion letter or other form of closure in a given year. Identify the cleanup goals for each project, the land use the cleanup goals were based on, any institutional controls that were required, and whether public comment resulted in reopening the approved remedy. Release raw survey data.	As part of a brownfields grant from U.S. EPA, DTSC is undertaking significant enhancements to its database to make this type of information available to both staff and the public. These system improvements should be completed by January, 2006. The agencies are also evaluating the systems and the information in those systems to determine whether enhancements could be made to better use the available information and measure state progress on California's brownfields.
38		Consider an outreach program specifically targeted to developers and redevelopment agencies.	